



General Assembly

Amendment

February Session, 2014

LCO No. 4333

SB0001404333SD0

Offered by:

SEN. CRISCO, 17th Dist.

REP. MEGNA, 97th Dist.

To: Senate Bill No. **14**

File No. 9

Cal. No. 45

"AN ACT CONCERNING PHARMACY AUDITS AND ELECTRONIC FUNDS TRANSFER PAYMENTS TO PHARMACIES."

1 Strike section 1 in its entirety and insert the following in lieu thereof:

2 "Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this
3 section:

4 (1) "Extrapolation" means the practice of inferring a frequency of
5 dollar amount of overpayments, underpayments, nonvalid claims or
6 other errors on any portion of claims submitted, based on the
7 frequency or dollar amount of overpayments, underpayments,
8 nonvalid claims or other errors actually measured in a sample of
9 claims;

10 (2) "Pharmacy audit" means an audit, conducted on-site or remotely
11 by or on behalf of a pharmacy benefits manager or plan sponsor of any
12 records of a pharmacy for prescription drugs or prescription devices
13 dispensed by such pharmacy to beneficiaries of a health benefit plan.

14 "Pharmacy audit" does not include (A) a concurrent review or desk
15 audit that occurs within three business days of the pharmacy's
16 transmission of a claim to a pharmacy benefits manager or plan
17 sponsor, or (B) a concurrent review or desk audit where no charge-
18 back or recoupment is demanded by the pharmacy benefits manager
19 or plan sponsor;

20 (3) "Plan sponsor" has the same meaning as described in section 38a-
21 479aaa of the general statutes, as amended by this act.

22 (b) (1) No entity other than a pharmacy benefits manager or a plan
23 sponsor shall conduct a pharmacy audit unless such entity and
24 manager or sponsor, as applicable, have executed a written agreement
25 for the conducting of pharmacy audits. Prior to conducting a
26 pharmacy audit on behalf of such manager or sponsor, such entity
27 shall notify the pharmacy in writing that such entity and manager or
28 sponsor, as applicable, have executed such agreement.

29 (2) Except as otherwise provided by state or federal law, an entity
30 conducting a pharmacy audit may have access to a pharmacy's
31 previous pharmacy audit report only if such report was prepared by
32 such entity.

33 (3) Any information collected during a pharmacy audit shall be
34 confidential by law, except that the entity conducting the pharmacy
35 audit may share such information with the pharmacy benefits manager
36 and the plan sponsor, for which such pharmacy audit is being
37 conducted.

38 (4) No entity conducting a pharmacy audit shall compensate,
39 directly or indirectly, any of its employees or any contractor such
40 entity contracts with to conduct a pharmacy audit, based on the
41 amount claimed or the actual amount recouped from the pharmacy
42 being audited.

43 (c) (1) Any entity conducting a pharmacy audit shall:

44 (A) Provide the pharmacy being audited at least ten business days'
45 prior written notice before conducting a pharmacy audit;

46 (B) Provide the pharmacy being audited with a masked list of
47 prescriptions to assist the pharmacy to prepare for the pharmacy audit.
48 A list is considered masked if the last two numbers of a prescription
49 are marked with an "X";

50 (C) Not initiate or schedule a pharmacy audit during the first five
51 business days of any month for any pharmacy that averages in excess
52 of six hundred prescriptions filled per week, without the express
53 consent of the pharmacy;

54 (D) Make all determinations regarding the validity of a prescription
55 or other record consistent with sections 20-612 to 20-623, inclusive, of
56 the general statutes or as specified in federal risk management
57 programs;

58 (E) Accept paper or electronic signature logs that document the
59 delivery of prescription drug and device and pharmacist services to a
60 health plan beneficiary or such beneficiary's agent; and

61 (F) Provide to the representative of the pharmacy, prior to leaving
62 the pharmacy at the conclusion of an on-site portion of a pharmacy
63 audit, a complete list of records reviewed.

64 (2) Any pharmacy audit that involves clinical judgment shall be
65 conducted by or in consultation with a licensed pharmacist.

66 (3) No pharmacy audit shall cover (A) a period of more than
67 twenty-four months after the date a claim was submitted by the
68 pharmacy to the pharmacy benefits manager or plan sponsor unless a
69 longer period is required by law, or (B) more than two hundred fifty
70 prescriptions.

71 (d) (1) (A) Not later than sixty calendar days after an entity
72 concludes a pharmacy audit and before such entity issues a final

73 pharmacy audit report, such entity shall provide an initial pharmacy
74 audit review to the pharmacy. The pharmacy may, within thirty
75 calendar days after it receives such initial review, respond to the
76 findings in such initial review.

77 (B) To validate the pharmacy record and delivery, a pharmacy may
78 use authentic and verifiable statements or records, including, but not
79 limited to, medication administration records of a nursing home,
80 assisted living facility, hospital or health care provider with
81 prescriptive authority.

82 (C) To validate claims in connection with prescriptions or changes
83 in prescriptions, or refills of prescription drugs, a pharmacy may use
84 any valid prescription, including, but not limited to, medication
85 administration records, facsimiles, electronic prescriptions,
86 electronically stored images of prescriptions, electronically created
87 annotations or documented telephone calls from the prescribing health
88 care provider or such provider's agent. Documentation of an oral
89 prescription order that has been verified by the prescribing health care
90 provider shall meet the provisions of this subparagraph for the initial
91 audit review.

92 (D) No entity conducting a pharmacy audit may use extrapolation
93 to calculate penalties or amounts to be charged back or recouped
94 unless otherwise required by federal requirements or federal plans. No
95 such entity shall include dispensing fees in the calculation of
96 overpayments unless a prescription is considered a misfill. As used in
97 this subparagraph, "misfill" means a prescription that was not
98 dispensed, a prescription error, a prescription whereby the prescriber
99 denied the authorization request or where an extra dispensing fee was
100 charged.

101 (2) (A) Not later than sixty calendar days after any responses from
102 the pharmacy under subdivision (1) of this subsection are received by
103 the entity conducting the pharmacy audit or, if no such responses are
104 received, after the entity concludes a pharmacy audit, such entity shall

105 issue a final pharmacy audit report that takes into consideration any
106 responses provided to such entity by the pharmacy.

107 (B) A pharmacy may appeal a final pharmacy audit report in
108 accordance with the procedures established by the entity conducting
109 the pharmacy audit.

110 (e) (1) No pharmacy shall be subject to charge-back or recoupment
111 for a clerical or recordkeeping error in a required document or record,
112 including a typographical error, scrivener's error or computer error,
113 unless such error resulted in actual financial harm to the pharmacy
114 benefits manager, plan sponsor or a plan beneficiary.

115 (2) No entity conducting a pharmacy audit or person acting on
116 behalf of such entity shall charge-back or recoup, attempt to charge-
117 back or recoup, or assess or collect penalties from a pharmacy until the
118 time period to file an appeal of a final pharmacy audit report has
119 passed or the appeals process has been exhausted, whichever is later. If
120 an identified discrepancy in a pharmacy audit exceeds twenty-five
121 thousand dollars, future payments to the pharmacy in excess of such
122 amount may be withheld pending adjudication of an appeal. No
123 interest shall accrue for any party during the audit period, beginning
124 with the notice of the pharmacy audit and ending with the conclusion
125 of the appeals process.

126 (f) The provisions of this section shall not apply to an audit of
127 pharmacy records conducted when (1) fraud or other intentional or
128 wilful misrepresentation is indicated by physical review or review of
129 claims data or statements, or (2) other investigative methods indicate a
130 pharmacy is or has been engaged in criminal wrongdoing, fraud or
131 other intentional or wilful misrepresentation."